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* Associated Firm

21 January 2014

Dr Richard Chadwick
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Dr Chadwick,

Exclusive Dealing Notifications - Harley-Davidson Australia Pty Ltd

We act for Harley-Davidson Australia Pty Ltd. We enclose two exclusive dealing notifications by Harley-Davidson Australia Pty Ltd pursuant to section 93(1) of the *Competition and Consumer Act 2010 (Cth) (Act)*.

These notifications are lodged in respect of conduct which may constitute exclusive dealing under sections 47(6) and 47(7) of the Act. The notifications are given in the prescribed form and should not be taken as admissions that the conduct would contravene the statutory prohibition.

We enclose a cheque made payable to the Commission in the sum of \$200, being the prescribed lodgement fee for two notifications.

Please do not hesitate to contact the undersigned if you require any further information or have any queries concerning these notifications.

Yours sincerely,

Ross McLean
Partner
+61 2 8922 5287
Ross.McLean@bakermckenzie.com

Jonathan Flintoft
Senior Associate
+61 2 8922 5179
Jonathan.Flintoft@bakermckenzie.com

Encl

AUST. COMPETITION &
CONSUMER COMMISSION

22 JAN 2014

CANBERRA

Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47(2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) *Name of person giving notice:*

N97209

Harley-Davidson Australia Pty Ltd (ABN 83 098 483 259) (**H-DA**)

(b) *Short description of business carried on by that person:*

H-DA distributes Harley-Davidson® motorcycles, parts, accessories, motorclothes and other products and services in Australia. The products and services are supplied to authorised H-DA dealers (**Dealers**) who resell to customers at the retail level.

(c) *Address in Australia for service of documents on that person:*

c/- Ross McLean/ Jonathan Flintoft
Baker & McKenzie
AMP Centre
Level 27, 50 Bridge Street
SYDNEY NSW 2000

2. Notified arrangement

(a) *Description of the goods or services in relation to the supply or acquisition of which this notice relates:*

Used Harley-Davidson® motorcycles
Lead management, used motorcycle locator and similar services

(b) *Description of the conduct or proposed conduct:*

H-DA is proposing to offer the Genuine Pre-Owned Program (**Program**) to its Dealers in respect of the sale of used Harley-Davidson® motorcycles that fit specific requirements. Dealers who participate in the Program and comply with its requirements will be permitted by H-DA to use the Harley-Davidson Genuine Pre-Owned logo on used motorcycles offered for sale by them under the Program.

Used motorcycles will need to satisfy the following requirements in order to be sold under the Program:

- be less than five years old;
- have travelled less than 50,000 kilometres;
- have a vehicle history certificate; and

- have completed a full Harley-Davidson quality check (in accordance with a checklist developed by H-DA).

Under the Program, participating Dealers will be provided with access to a Harley-Davidson branded website for used motorcycles which will list details of used Harley-Davidson® motorcycles complying with the Program requirements currently being offered for sale by participating Dealers and include a motorcycle locator function, and a system for lead management. H-DA has entered into an agreement with Datamotive, a division of carsales.com Limited, to develop and host the used motorcycles website and provide certain other services to support the operation of the Program website.

Dealers will not be required to participate in the Program. However, if Dealers choose to participate in the Program they will be required to enter into contractual arrangements with Datamotive in order to be given access to the Program website and the services provided under it, which will require participating Dealers to use Datamotive systems, software and technology services. All licence fees for access to Datamotive's systems and the Program website and related services will be paid by H-DA. Further, participating Dealers will not be required to pay any fee for leads generated via the Program website.

H-DA is concerned that the arrangements described above could be characterised in a way which could contravene sections 47(6) and (7) of the *Competition and Consumer Act 2010*. In order to minimise the risks of contravening sections 47(6) and (7), H-DA wishes to notify the arrangements described above under section 93(1).

H-DA is making a separate notification in respect of arrangements for the provision of warranty management and administration services under the Program.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

- (a) *Class or classes of persons to which the conduct relates:*

Existing and new Dealers.

- (b) *Number of those persons:*

- (i) *At present time:*

36.

- (ii) *Estimated within the next year:*

Up to 44.

- (c) *Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:*

| Name | Address |
|-------------------------------|--|
| Capital Harley-Davidson | 28 Peisley Street, Orange, NSW 2800 |
| Central Coast Harley-Davidson | 210 Manns Road, West Gosford, NSW 2250 |
| Desert Edge Motorcycles | 23 George Street, Alice Springs, NT 0870 |

| | |
|---------------------------------|--|
| Fraser Motorcycles - Newcastle | 137 Lambton Road, Broadmeadow, NSW 2292 |
| Fraser Motorcycles - Perth | 47 Walter Road, Dianella, WA 6062 |
| Fraser Motorcycles - Sydney | 153-165 Parramatta Road, Concord, NSW 2138 |
| Fraser Motorcycles - Wollongong | 11-13 Princes Highway, Fairy Meadow, NSW 2159 |
| Gasoline Alley Harley-Davidson | 3445 Pacific Highway, Slacks Creek, QLD 4127 |
| Geelong Harley-Davidson | 70-72 Mercer Street, Geelong, VIC 3220 |
| Gold Coast Harley-Davidson | Corner Ferry Road & Minnie Street, Southport, QLD 4215 |
| Great Southern Motorcycles | 58 Chester Pass Road, Albany, WA 6330 |
| Griffith Motorcycle Centre | Lot 1, Burrell Place, Griffith, NSW 2680 |
| Harley Central | 231 High Street, Bendigo, VIC 3555 |
| Harley City | 770 Sydney Road, Brunswick, VIC 3056 |
| Harley-Davidson of Blacktown | 70 Sunnyholt Road, Blacktown, NSW 2148 |
| Harley Heaven - Adelaide | 221 Franklin Street, Adelaide, SA 5000 |
| Harley Heaven - Dandenong | 109 Lonsdale Street, Dandenong, VIC 3175 |
| Harley Heaven - Melbourne | 115 A'Beckett Street, Melbourne, VIC 3000 |
| Harley Heaven - Ringwood | 507 Maroondah Highway, Ringwood, VIC 3134 |
| Harley Magic | 21 Water Street, Cairns, QLD 4870 |
| Horsham Harley- Davidson | 84 McPherson Street, Horsham, VIC 3400 |
| Kingaroy Motorcycles | 200 Haly Street, Kingaroy, QLD 4610 |
| Mackay Motorcycles | 26 Peel Street, Mackay, QLD 4740 |
| Morgan & Wacker | 54 Ross Street, Newstead, QLD 4006 |
| North Coast V-Twins | 1 GDT Secombe Close, Coffs Harbour, NSW 2450 |
| NT Motorcycle Centre | Unit 1, 1143 Stuart Highway, Pinelands, NT 0829 |
| Perth Harley-Davidson | 1427 Albany Highway, Cannington, WA 6107 |
| Phil's Garage | 401 Wagga Road, Lavington, NSW 2641 |
| Robbo's Harley-Davidson | 281 Canberra Avenue, Fyshwick, ACT 2609 |

| | |
|--------------------------------|---|
| Rocky Harley-Davidson | 125 Corner William & Kent Street, Rockhampton, QLD 4700 |
| Southwest Harley-Davidson | 74 Blair Street, Bunbury, WA 6230 |
| SunCity Harley-Davidson | 735 Woolcock Street, Townsville, QLD 4814 |
| Sunshine Coast Harley-Davidson | 17 Trinder Avenue, Maroochydore, QLD 4558 |
| Sy's Harley-Davidson | 16 Blaxland Road, Campbelltown, NSW 2560 |
| Thomas Lee Motorcycles | 386 Frome Street, Moree, NSW 2400 |
| Trivett Harley-Davidson Sydney | 75-85 O'Riordan Street, Alexandria, NSW 2015 |

4. Public benefit claims

(a) *Arguments in support of notification:*

The notified conduct will generate a number of public benefits, including:

- (i) through the application of uniform standards and branding in respect of the advertisement and sale of used Harley-Davidson® motorcycles across H-DA's network of dealers, encouraging a consistent Harley-Davidson® brand position, the conduct will promote inter-brand competition amongst motorcycle dealers;
- (ii) enabling H-DA to more effectively and efficiently manage the collection, processing and conversion of customer information (for example, customer leads) so as to be able to offer more responsive and competitive products and services to customers;
- (iii) enabling Dealers to access services from H-DA (for example, customer leads) effectively and efficiently and, in turn, to offer more responsive and competitive products and services to customers;
- (iv) ensuring that customers interested in purchasing a used Harley-Davidson® motorcycle receive prompt attention and better service from a Dealer (or Dealers) by being able to access details regarding used Harley-Davidson® motorcycles in one place, which will save the customer time and expense in locating a suitable motorcycle dealer. This will promote inter-brand competition amongst motorcycle dealers; and
- (v) Dealers that choose to participate in the Program will have all licence fees for access to the services and systems under the Program paid for by H-DA and will not be required to pay a fee for leads generated via the Program website. Dealers would be required to pay such fees to obtain access to similar systems and services from third party service providers if not part of the Program. The arrangement therefore encourages efficiency and reduces transaction costs for Dealers, promoting inter-brand competition.

(b) *Facts and evidence relied upon in support of these claims:*

By facilitating consistent positioning of the Harley-Davidson® brand, and the application of uniform standards, the conduct will promote and maintain the Harley-Davidson® brand and increase inter-brand competition. This will apply pressure on H-DA's competitors to improve their sales techniques for used

motorcycles, and more broadly enhance their branding efforts, thereby increasing competition.

Making the collection, processing and conversion of customer information more effective and efficient, and enabling Dealers to access such services, will mean that both H-DA and Dealers will be able to be more responsive to customers and offer more competitive products and services to customers. Having details of all used Harley-Davidson® motorcycles satisfying the requirements of the Program available for sale through Dealers listed on the same platform is integral to the success of the Program. Without these features, the Program would not be as effective and individual Dealers would be unlikely to be able to replicate the Program on their own. Again, these features of the Program will put pressure on H-DA's competitors to improve their systems with respect to the sale of used motorcycles, thereby increasing competition.

The fact that H-DA is paying the licence fees for access to Datamotive's systems and the Program website and related services as a benefit to Dealers will significantly reduce transaction costs for Dealers. Dealers would be required to pay fees to obtain access to similar systems and services from third party service providers outside of the Program. This benefit further increases the efficiencies generated by the Program.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

We consider that the relevant markets for assessing the notified conduct are:

- (i) the retail market for motorcycles; and
- (ii) the market for providing systems, software and technology services (including lead management services).

6. Public detriments

(a) *Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2(a) above and the prices of goods or services in other affected markets:*

H-DA does not consider that the notified conduct will result in or is likely to result in any public detriment.

(b) *Facts and evidence relevant to these detriments:*

The relevant markets for assessing this notification are competitive. There are a large number of suppliers of new and used motorcycles. In addition, there are numerous other providers of systems, software and technology services. Accordingly, the notified conduct will have a negligible impact on competition in the relevant markets.

In addition, the notified conduct will not cause any detriment to the public. There is no restriction on customer choice. Customers remain free to purchase a used motorcycle from a retailer of their choice (including from the Dealers). In terms of the systems, software and technology services (including lead management services), the notified conduct will save customer time and expense in searching for used Harley-Davidson® motorcycles satisfying the requirements of the Program by

ensuring that details of all such motorcycles available for sale through Dealers are listed in the same place.

Dealers may incur minimal costs in accessing the systems, software and technology services (including lead management services) but will benefit considerably from not having to pay licence fees to access the systems, software and technology services. Dealers are also likely to benefit from the more efficient management of customer lead information by being able to offer more competitive products and services to customers.

Dealers will not be restricted from entering into their own arrangements with a third party provider of systems, software and technology services (including lead management services), including Datamotive, in respect of the advertisement and sale of used motorcycles. However, in this case, Dealers would have to pay any licence fees themselves.

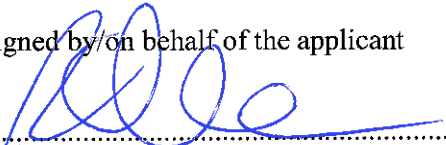
7. Further information

- (a) *Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:*

Ross McLean/ Jonathan Flintoft
Baker & McKenzie
AMP Centre
Level 27, 50 Bridge Street
SYDNEY NSW 2000

Dated: 21 January 2014

Signed by/on behalf of the applicant



.....
(Signature)

Ross McLean
Baker & McKenzie, Solicitors for the Applicant
Partner

Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47(2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) *Name of person giving notice:*

Harley-Davidson Australia Pty Ltd (ABN 83 098 483 259) (**H-DA**)

(b) *Short description of business carried on by that person:*

H-DA distributes Harley-Davidson® motorcycles, parts, accessories, motorclothes and other products and services in Australia. The products and services are supplied to authorised H-DA dealers (**Dealers**) who resell to customers at the retail level.

(c) *Address in Australia for service of documents on that person:*

c/- Ross McLean/ Jonathan Flintoft
Baker & McKenzie
AMP Centre
Level 27, 50 Bridge Street
SYDNEY NSW 2000

2. Notified arrangement

(a) *Description of the goods or services in relation to the supply or acquisition of which this notice relates:*

Used Harley-Davidson® motorcycles
Warranty management and administration services

(b) *Description of the conduct or proposed conduct:*

H-DA is proposing to offer the Genuine Pre-Owned Program (**Program**) to its Dealers in respect of the sale of used Harley-Davidson® motorcycles that fit specific requirements. Dealers who participate in the Program and comply with its requirements will be permitted by H-DA to use the Harley-Davidson Genuine Pre-Owned logo on used motorcycles offered for sale by them under the Program.

Used motorcycles will need to satisfy the following requirements in order to be sold under the Program:

- be less than five years old;
- have travelled less than 50,000 kilometres;

N97210

- have a vehicle history certificate; and
- have completed a full Harley-Davidson quality check (in accordance with a checklist developed by H-DA).

Customers who purchase a used motorcycle under the Program will be provided by the selling Dealer with a free Harley-Davidson® branded used motorcycle warranty for up to 12 months in respect of the motorcycle, if the motorcycle is no longer covered by a manufacturer's warranty. If the motorcycle has less than 12 months of the manufacturer's warranty remaining, the customer will be provided with a 6 month used motorcycle warranty. Customers will have the option of purchasing Harley-Davidson® branded used motorcycle warranties for additional terms and/ or with additional benefits. All warranties provided under the Program will include free roadside assistance for the duration of the warranty (provided by H-DA at no cost to Dealers or customers).

Dealers will not be required to participate in the Program. However, if Dealers choose to participate in the Program they will be required to offer and provide the warranties described above in respect of each used Harley-Davidson® motorcycle sold to a customer under the Program. All warranties offered and provided under the Program will be issued by the Dealer, required to carry the name of the Program and associated Harley-Davidson® branding and will be on the same terms and conditions, Dealers being required to use standard Program documentation. The warranties will be managed and administered by Swann Insurance, with whom H-DA has an agreement covering, inter alia, the provision of warranty management and administration services to Dealers. H-DA's arrangement with Swann Insurance also includes the provision by Swann Insurance to H-DA of information relating to sales of used motorcycles and other reporting functions.

In order to be able to offer and provide the warranties required under the Program, H-DA requires participating Dealers to obtain services from Swann Insurance relating to management and administration of the warranty and indemnification of the Dealers in the event of a claim under the warranty.

For the avoidance of doubt, end customers will not be required to purchase a warranty from a Dealer or any other party when purchasing a used Harley-Davidson® motorcycle from a Dealer under the Program.

H-DA is concerned that the arrangements described above could be characterised in a way which could contravene sections 47(6) and (7) of the *Competition and Consumer Act 2010*. In order to minimise the risks of contravening sections 47(6) and (7), H-DA wishes to notify the arrangements described above under section 93(1).

H-DA is making a separate notification in respect of arrangements for the provision of a used motorcycles website, motorcycle locator function and lead management system as part of the Program.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

(a) *Class or classes of persons to which the conduct relates:*

Existing and new Dealers.

(b) *Number of those persons:*

(i) *At present time:*

36.

(ii) *Estimated within the next year:*

Up to 44.

(c) *Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:*

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| Fraser Motorcycles - Wollongong | 11-13 Princes Highway, Fairy Meadow, NSW 2159 |
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| Harley City | 770 Sydney Road, Brunswick, VIC 3056 |
| Harley-Davidson of Blacktown | 70 Sunnyholt Road, Blacktown, NSW 2148 |
| Harley Heaven - Adelaide | 221 Franklin Street, Adelaide, SA 5000 |
| Harley Heaven - Dandenong | 109 Lonsdale Street, Dandenong, VIC 3175 |
| Harley Heaven - Melbourne | 115 A'Beckett Street, Melbourne, VIC 3000 |
| Harley Heaven - Ringwood | 507 Maroondah Highway, Ringwood, VIC 3134 |

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| Kingaroy Motorcycles | 200 Haly Street, Kingaroy, QLD 4610 |
| Mackay Motorcycles | 26 Peel Street, Mackay, QLD 4740 |
| Morgan & Wacker | 54 Ross Street, Newstead, QLD 4006 |
| North Coast V-Twins | 1 GDT Seccombe Close, Coffs Harbour, NSW 2450 |
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| Perth Harley-Davidson | 1427 Albany Highway, Cannington, WA 6107 |
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| Robbo's Harley-Davidson | 281 Canberra Avenue, Fyshwick, ACT 2609 |
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| Southwest Harley-Davidson | 74 Blair Street, Bunbury, WA 6230 |
| SunCity Harley-Davidson | 735 Woolcock Street, Townsville, QLD 4814 |
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| Sy's Harley-Davidson | 16 Blaxland Road, Campbelltown, NSW 2560 |
| Thomas Lee Motorcycles | 386 Frome Street, Moree, NSW 2400 |
| Trivett Harley-Davidson Sydney | 75-85 O'Riordan Street, Alexandria, NSW 2015 |

4. Public benefit claims

(a) *Arguments in support of notification:*

The notified conduct will generate a number of public benefits, including:

- (i) through the application of uniform standards and branding in respect of the advertisement and sale of used Harley-Davidson® motorcycles across H-DA's network of dealers, encouraging a consistent Harley-Davidson® brand position, the conduct will promote inter-brand competition amongst motorcycle dealers;
- (ii) enabling H-DA to more effectively and efficiently manage the collection, processing and conversion of customer information so as to be able to offer more responsive and competitive products and services to customers;

- (iii) ensuring that customers interested in purchasing a used Harley-Davidson® motorcycle receive better products and services from Dealers, which will promote inter-brand competition amongst motorcycle dealers; and
- (v) the notified conduct has enabled H-DA to secure better terms and conditions for Dealers than individual Dealers would otherwise be able to obtain with third party service providers. The arrangement therefore encourages efficiency and reduces transaction costs.

(b) *Facts and evidence relied upon in support of these claims:*

By facilitating consistent positioning of the Harley-Davidson® brand, and the application of uniform standards, the conduct will promote and maintain the Harley-Davidson® brand and increase inter-brand competition. This will apply pressure on H-DA's competitors to improve their sales techniques for used motorcycles, and more broadly enhance their branding efforts, thereby increasing competition.

The provision of free warranties and roadside assistance in respect of used motorcycles sold under the Program will enable Dealers to offer more competitive products and services to customers. Without these features, the Program would not be as effective and individual Dealers would be unlikely to be able to replicate the Program on their own. These features of the Program will put pressure on H-DA's competitors to improve their systems with respect to the sale of used motorcycles, thereby increasing competition.

H-DA's global experience in securing the supply of similar services, together with the economies of scale achieved by negotiating on behalf of the Dealer network, means that H-DA has secured competitive terms and conditions for Dealers with regard to the warranty management and administration services. The fact that similar supply terms will apply across H-DA's Dealer network renders the arrangement efficient and will reduce transaction costs for Dealers.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

We consider that the relevant markets for assessing the notified conduct are:

- (i) the retail market for motorcycles; and
- (ii) the retail market for warranty management and administration services.

6. Public detriments

(a) *Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2(a) above and the prices of goods or services in other affected markets:*

H-DA does not consider that the notified conduct will result in or is likely to result in any public detriment.

(b) *Facts and evidence relevant to these detriments:*

The relevant markets for assessing this notification are competitive. There are a large number of suppliers of new and used motorcycles. In addition, there are numerous other providers of warranty management and administration services. Accordingly, the notified conduct will have a negligible impact on competition in the relevant markets.

In addition, the notified conduct will not cause any detriment to the public. There is no restriction on customer choice. Customers remain free to purchase a used motorcycle from a retailer of their choice (including from the Dealers). With respect to the warranty management and administration services, customers will not be required to pay for the initial free used motorcycle warranty (which will be an additional benefit of purchasing a motorcycle under the Program), and will be free to choose whether they wish to pay for any additional period of warranty. Also, free roadside assistance will be provided for the full period of any warranty.

Dealers will benefit from the more competitive terms and conditions that H-DA has been able to obtain with respect to the provision of warranty management and administration services, resulting in efficiencies and cost savings. Dealers will therefore be able to offer more competitive terms to their own customers meaning that these efficiencies and cost savings will ultimately be passed on to customers.

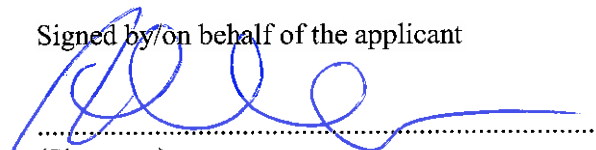
7. Further information

(a) *Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:*

Ross McLean/ Jonathan Flintoft
Baker & McKenzie
AMP Centre
Level 27, 50 Bridge Street
SYDNEY NSW 2000

Dated: 21 January 2014

Signed by/on behalf of the applicant



.....
(Signature)

Ross McLean
Baker & McKenzie, Solicitors for the Applicant
Partner